

CALIFORNIA COASTAL COMMISSION

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REVISED STAFF REPORT AND RECOMMENDATION**ON CONSISTENCY CERTIFICATION**

Consistency Certification No.	CC-013-02
Staff:	MPD-SF
File Date:	2/07/2002
3 Months:	5/07/2002
6 Months:	Extended
Commission Meeting:	1/12/2005

APPLICANT: **Goleta Sanitary District**

PROJECT**LOCATION:**

Goleta Municipal Wastewater treatment plant, Santa Barbara County,
and offshore waters (Exhibits 1-2)

PROJECT**DESCRIPTION:**

Reissuance of Secondary Treatment Waiver

FEDERAL**AGENCY AND****PERMIT:**

EPA (Environmental Protection Agency) Reissuance, under Section 301(h) of the Clean Water Act, of a modified National Pollutant Discharge and Elimination System (NPDES) Permit for Wastewater Treatment Plant Discharges

SUBSTANTIVE**FILE****DOCUMENTS:**

See page 27.

Staff Note: This item was originally scheduled for Commission action in mid-2002. The matter was extended, pending Regional Water Quality Control Board (RWQCB) review. In July 2002 the RWQCB denied the waiver, and eventually the Sanitary District agreed to upgrade to secondary treatment. However due to the length of time needed to implement secondary treatment, a waiver is still needed in the interim period. On November 10, 2004, the District and the RWQCB signed a settlement agreement providing for an upgrade to full

secondary treatment within ten years (see schedule, pp. 5-6, Exhibit 4, and pp. 6-7, Exhibit 6). On November 29, 2004, the RWQCB approved the District's revised waiver application.

EXECUTIVE SUMMARY

Under the Clean Water Act (CWA), wastewater discharges from publicly owned treatment works (POTWs) are required to receive at least secondary treatment. However, Clean Water Act Section 301(h), sometimes referred to as the "ocean waiver" provision of the Clean Water Act, gives the EPA Administrator (with the concurrence of the RWQCB (Regional Water Quality Control Board)) the authority to grant a waiver from otherwise applicable secondary treatment requirements. Such a waiver would authorize the Sanitary District to continue to discharge effluent receiving less than full secondary treatment in terms of suspended solids, biochemical oxygen demand, and pH. The waivers need to be renewed every five years.

In reviewing past secondary treatment waiver and waiver renewal requests for the City of Morro Bay, San Diego, Goleta and Orange County, the Commission has historically concurred with consistency certifications and found applicable water quality and marine resource policies of the Coastal Act to be met when: (1) adequate monitoring is in place; and (2) EPA and the appropriate RWQCB have determined that the discharger's effluent complies with the applicable Clean Water Act and Ocean Plan requirements. The one exception to this was the Commission's April 8, 2002, objection to the City of San Diego's secondary treatment waiver renewal (CC-10-02). However upon resubmittal (after actions by the RWQCB and the State Water Resources Control Board (SWRCB)), the Commission subsequently concurred with this waiver (CC-28-02).

Goleta's discharges are relatively small; Goleta's flows average 4.7 million gallons per day (mgd) (4.4 mgd of which receive secondary treatment), compared to California's two large waiver applicants: Orange County (approximately 250 mgd),¹ and San Diego (approximately 195 mgd). EPA's Independent Technical evaluation determined that Goleta meets the applicable Clean Water Act standards for a waiver. Monitoring for the 5 years preceding the Sanitary District's submittal in 2002 indicated that the treatment plant averaged, in terms of monthly percent removal, 86% removal of total suspended solids (SS), and 72% removal of BOD (biochemical oxygen demand).² Full secondary treatment standards would require 85% removal of both TSS and BOD. Further, the monitoring of the biological effects of the discharges supports the applicant's claim that the discharges comply with the secondary treatment waiver requirements and would not adversely affect marine resources. The stringent monitoring as required under Section 301(h) will be continued. Moreover, the Sanitary District has agreed to upgrade to full secondary treatment within ten years.

¹ Orange County has now agreed to upgrade to secondary treatment.

² More recent monitoring data for 2003 indicates 84% removal of total suspended solids (TSS), and 75% removal of BOD.

On November 29, 2004, the RWQCB approved the Sanitary District's revised waiver application. As conditioned by the RWQCB (Exhibit 6), the discharges would not adversely affect marine resources and would be consistent with Sections 30230, 30231, 30234, 30234.5, 30213, and 30220 (the marine resources, water quality, commercial and recreational fishing, and public recreation policies) of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description. The Goleta Sanitary District has requested a waiver under Section 301(h) of the Clean Water Act (the Act), 33 U.S.C. Section 1311(h), from the secondary treatment requirements contained in Section 301(b)(1)(B) of the Act, 33 U.S.C. Section 1311(b)(1)(B). The waiver is being sought for the Goleta wastewater treatment plant and outfall, which is 36 inches in diameter and terminates in a 280-foot long multiport (34 port) diffuser, approximately 1 nautical mile (5,912 ft.) offshore of Goleta, in about 87 feet of water (Exhibit 2).

The treatment plant provides full primary and partial secondary wastewater treatment for a service population of about 80,000, serving the Goleta/Santa Barbara airport and surrounding area. The application is based on an current average dry-weather flow of 4.7 million gallons per day (mgd) (and an estimated flow of 7.64 mgd at the end of the 5-Year permit). Flows up to 4.4 mgd receive secondary treatment; excess flows receive primary treatment and are blended with secondarily treated flows. Total design capacity is 9 mgd. Peak wet weather capacity is 25.4 mgd.

The system includes a pretreatment program for regulating monitoring industrial discharges (which form a low percentage of total flows), as well as recycling and sludge reuse programs. A portion of Goleta's secondary flows (up to 3 mgd) may be diverted for water reclamation. The remaining secondary flow is combined with the primary flows, where it is chlorinated and dechlorinated before discharge to the ocean. Sludge from the primary process is treated through anaerobic digestion, then sent to stabilization basins. Dried sludge is made available as Class A biosolids or as a soil amendment for agricultural lands.

Secondary treatment is defined in Clean Water Act implementing regulations (40 CFR Part 133) in terms of effluent quality for suspended solids (SS), biochemical oxygen demand (BOD) and pH. The secondary treatment requirements for SS, BOD and pH are as follows:

SS: (1) The 30-day average shall not exceed **30 mg/l** (milligrams per liter). (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than **85%**;

BOD: (1) The 30-day average shall not exceed **30 mg/l**. (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than **85%**;

pH: The effluent limits for pH shall be maintained within the limits of 6.0 to 9.0 pH units.

The **current permit** contains the following limits for SS and BOD:

SS: (1) A 30-day average for suspended solids of **63 mg/l**. (2) The maximum allowable at any time shall not exceed 100 mg/l. (3) The 30-day average percent removal shall not be less than **75%**.

BOD: (1) The 30-day average shall not exceed **98 mg/l**. (2) The maximum allowable at any time shall not exceed 150-mg/l.

Data for 2001 showed Goleta's treatment plant removed an average of **85%** of suspended solids and **74%** of BOD. (More recent monitoring data for 2003 indicates **84%** removal of total suspended solids (TSS), and **75%** removal of BOD.) No variance from secondary pH standards is requested, as the plant meets secondary standards for pH.

State water quality standards (i.e., the California Ocean Plan) require removal of **75%** of suspended solids. The Ocean Plan does not have an effluent limitation for BOD; the comparable standard is for dissolved oxygen, and the Plan requires that "dissolved oxygen shall not at any time be depressed more than 10% from that which occurs naturally as a result of the discharge of oxygen-demanding waste materials."

II. Goleta Waiver History. The RWQCB granted the Goleta Sanitary District's previous waiver request on July 26, 1996 (NPDES Permit No. CA0048160). The Commission concurred with a consistency certification for the waiver on January 8, 1997 (CC-126-96). On March 29, 2001, the Sanitary District applied to EPA and the RWQCB for a renewal of the waiver. These waivers and waiver renewal applications are independently reviewed but jointly issued by EPA and the RWQCB. EPA's independent Technical Analysis is attached as Exhibit 3. After EPA performs its technical review it issues a Tentative Decision (TDD) to grant the 301(h) waiver of secondary requirements, which is then followed by a RWQCB hearing (including public comments), and a final EPA decision (including responses to comments).

This item was originally scheduled for the Commission's May 2002 meeting. The matter was extended, pending RWQCB review, and on July 12, 2002, the RWQCB denied a "301h" permit (and "401 certification") for the waiver. The RWQCB's Resolution required the District to submit a modified NPDES permit application to the RWQCB by December 12, 2002. On August 8, 2002, the District appealed the RWQCB action to the State Water Resources Control Board (SWRCB). On January 22, 2003, the SWRCB dismissed the District's petition "by operation of law."

On December 4, 2003, the District submitted an application for a 301(h) permit to the RWQCB and EPA, including a reduced flow limit of 7.64 mgd (down from the previously-proposed 8.24 mgd) (and also including a "Section 401" Water Quality Certification Application. The District provided additional information on December 19, 2003. On December 30, 2003 the Regional Board denied 401 certification without prejudice.

On May 7, 2004, the District agreed to upgrade to secondary treatment, stating that “it would be in the best interests of its constituents to propose an amendment to its pending application to convert to secondary treatment and to further explore how such an amendment might be structured.” In addition, while the District had filed a Petition for Writ of Mandate in Santa Barbara County Superior Court, the District and the RWQCB signed a settlement agreement dated November 10, 2004 (Exhibit 4), in which the District agrees to upgrade to full secondary treatment within ten years (and to maintain the total suspended solids (TSS) and biological oxygen demand (BOD) limits at existing permit levels). On November 29, 2004, the RWQCB approved the revised application (Exhibit 6). The RWQCB staff report described the settlement as follows:

After the Regional Board issues the proposed Order and the State Board resolves any third-party challenges regarding 301(h) waiver issues, the District will dismiss its lawsuit. The District proposes a ten-year conversion schedule to full secondary treatment (“Conversion Period”) and Regional Board staff will recommend approval to the Regional Board, assuming staff and the Discharger agree upon other settlement terms. The settlement would include a schedule of agreed-upon milestones for the Discharger to complete during the ten-year process. These milestones will be included in the settlement agreement and permit findings. The Regional Board can enforce the milestones by seeking penalties in an agreed-upon amount, or by asking a court to order the District to meet the schedule.

The settlement agreement will continue in effect only if the adopted Order includes findings stating that that (i) Subject to the provisions of the Settlement Agreement regarding Regional Board discretion and new evidence of plant impacts (defined below), the Settlement Agreement contemplates that the Regional Board will concur in or issue the First and Second 5-Year Permits in order to effect the District’s obligation to complete the upgrade of its treatment facility to full secondary treatment standards within a ten-year period, (ii) based on the administrative record, including population growth projections through 2014, known environmental and cumulative impacts of the District’s existing wastewater treatment facilities, and evidence submitted by the District of the time needed for upgrading the plant, the conversion schedule is appropriate, and (iii) at the end of the Conversion Period, once the District has converted to secondary treatment of effluent from the Plant, the Regional Board expects to issue an NPDES permit imposing effluent limitations based on secondary treatment as defined in 40 C.F.R. Part 133, or any more stringent requirements the Regional Board determines are necessary to comply with State or Federal law.

Addressing the temporal disparity between the 5-Year permit and the 10-year agreement to convert to full secondary treatment, the RWQCB report also notes:

Under the Clean Water Act, an NPDES permit (and therefore Section 401 certification and 301(h) waiver concurrence) cannot have a term in excess of five years. Therefore, USEPA and the Regional Board will review the record in five years to determine whether, in their discretion, the BOD and TSS limits and conversion schedule are appropriate. Unless there is a change in the law or new evidence of Plant impacts, the Regional Board's Executive Officer will recommend keeping the existing limits and schedule in place so that the District can complete the upgrade and the parties can avoid further litigation. "New evidence of plant impacts" means evidence in addition to what is already contained in the record, and would include information of actual or projected (2010-2014) effluent flows that are significantly higher than current projections and/or that could exceed permitted limits, new evidence showing that the facility does not meet the requirements for a 301(h) waiver, or a change in the law. The Executive Officer will provide a written description of any new evidence that is the basis for not recommending renewed 301(h) waiver.

The second permit will be issued as a 301(h)-modified permit or, if the record does not support a 301(h) waiver, an NPDES permit with a five-year time schedule order or cease and desist order. The settlement agreement will continue in force if either of these permits are issued. If for any reason the Regional Board does not continue the BOD and TSS limits and conversion schedule in the renewed permit, the settlement agreement would have no further effect and the Discharger would not have to pay any stipulated penalties that accrued during the term of the first permit.

III. Changes to the Waiver as Currently Proposed. Significant changes to the RWQCB's Order No. R3-2004-0129 (compared to the previous order - No. 96-21) include the following:

1. Local Wastewater Collection Entities: The Goleta West Sanitary District, the City of Santa Barbara Municipal Airport, the University of California at Santa Barbara, and the County of Santa Barbara Public Works Department have been removed from coverage under this proposed Order and will be regulated under a different Order (proposed Order No. R3-2004-0130).

2. Wastewater Collection System Management Plan: Requirements for the development and implementation of a Wastewater Collection System Management Plan were added to the Permittee's revised Order. The RWQCB has adopted the same or similar requirements for other municipal waste discharges. ...

3. Updates based on current Ocean Plan (includes both Table B effluent limits and updated narrative Ocean Plan requirements).

4. Modified requirements for Biosolids (based on standard current EPA language).

5. Findings regarding a ten-year upgrade to full secondary treatment.

In addition, the terms of the Settlement Agreement between the District and the RWQCB (Exhibit 4) provide:

1. Conversion Schedule [Note: see Exhibit 4, pp. 5-6 for detailed schedule/milestones]

The District shall undertake a program to install and operate equipment at its treatment plant capable of achieving, and achieve, secondary treatment requirements set forth in 40 C.F.R. Part 133, other than 40 C.F.R. section 133.105. The program must be designed to adequately address projected future wastewater flows as of the end of the Conversion Schedule. The District shall complete the planning, design, construction and operation of the facilities necessary to attain compliance with the secondary treatment requirements in accordance with the schedule set forth below (the "Conversion Schedule"). The ten-year upgrade period, commencing with the issuance of the First 5-Year Permit (defined below) and ending on the last date listed in the Conversion Schedule, is the "Conversion Period."

The Settlement Agreement also provides:

2. Secondary Treatment Limits and District's Conversion to Secondary.

a. First Five-Year Permit Cycle.

1. The Regional Board's Executive Officer shall recommend to the Regional Board that it (i) concur in the issuance of a five (5)-year 301(h) permit for the District (the "First 5- Year Permit"), and (ii) provide water quality certification of the First 5-Year Permit under Clean Water Act Section 401 (33 U.S.C. §1341) without changing the District's current requirements for biochemical oxygen demand ("BOD") or total suspended solids ("TSS"). It is not the intent of this Agreement to impose numeric or narrative requirements for other constituents (e.g., limits for bacteria) that would effectively require the District to upgrade to full-secondary treatment faster than provided under the Conversion Schedule. Therefore, unless there is new evidence that was not in the administrative record as of the date the Regional Board's Executive Officer signed this Agreement, the Executive Officer shall recommend that the First 5-Year Permit allow the District to continue with its current treatment process consistent with the provisions of its existing 301(h) permit, Order No. 96-21 (except as provided below with respect to Enhanced Treatment),

2. The BOD and TSS limits to be recommended by the Executive Officer for approval are ... [the same as listed on page 3 above]

3. The findings recommended for adoption by the Regional Board in connection with the First 5-Year Permit and the issuance of water quality certification shall reference the Settlement Agreement and shall incorporate the Conversion Schedule. The findings recommended for adoption by the Regional Board shall also state that:

(i) Subject to the provisions of the Settlement Agreement regarding Regional Board Discretion and New Evidence, the Settlement Agreement contemplates that the Regional Board will concur in or issue the First and Second 5-Year Permits (defined below) in order to effect the District's obligation to complete the upgrade of its treatment facility to full secondary treatment standards within a ten-year period,

(ii) Based on the administrative record, including population growth projections through 2014, known environmental and cumulative impacts of the District's existing wastewater treatment facilities, and evidence submitted by the District of the time needed for upgrading the plant, the Conversion Schedule is appropriate, and

(iii) At the end of the Conversion Period, once the District has converted to secondary treatment of effluent from the Plant, the Regional Board expects to issue an NPDES permit imposing effluent limitations based on secondary treatment as defined in 40 C.F.R. Part 133, 8 or any more stringent requirements the Regional Board determines are necessary to comply with State or Federal law.

4. If the Regional Board adopts the Executive Officer's recommendation by concurring with the First 5-Year Permit and issuing water quality certification, the District shall commence the process for completing all modifications to its plant necessary to comply with secondary treatment standards ("upgrade to secondary treatment") by the end of the Conversion Period, in accordance with the Conversion Schedule.

The Settlement Agreement also discusses what is expected for the second Five-Year permit cycle, indicating that a second waiver will be considered appropriate, unless:

...there is evidence not in the administrative record at the time the First 5-Year Permit is issued ("New Evidence") that (a) the plant cannot satisfy one or more of the applicable requirements for issuance of a 301(h) permit; (b) population growth is likely to cause the projected average dry weather flows through the plant to exceed 7.64 mgd prior to the end of the Conversion Period; or (c) a change in the law requires more stringent limits. [Note: see Exhibit 4, pp. 8-9, for further details.]

The Settlement Agreement further contains provisions for “Enhanced Treatment,” a contingency measure that would be triggered in the event growth in the area results in increases in mass loadings approaching 85% of permitted levels. The Agreement provides:

D. REQUIRED ACTIONS DURING CONVERSION PERIOD.

1. Enhanced Treatment.

a. If, during the Conversion Period, the District’s effluent monthly (30-day) average mass emissions for total suspended solids (TSS) or biochemical oxygen demand (BOD) measured over the three-month period of June, July, and August of each year exceed eighty-five percent (85%) of the mass emissions limit set forth in the District’s current 301(h) Permit, the District will enhance its treatment process by the use of polymers or other available technologies of equal or lesser cost (taking into account capital, operations and maintenance costs) and equal or better effectiveness (“Enhanced Treatment”) in an effort to reduce mass emissions to eighty-five percent (85%) of the Permit limit.

...

e. The Enhanced Treatment requirements shall not be stated as NPDES permit conditions that could give rise to administrative civil liability, but shall be incorporated into the findings adopted as part of any 301(h) or NPDES permit issued to the District during the Conversion Period. [Note: see Exhibit 4, pp. 15-16, for further details.]

IV. Previous Commission Reviews of Waivers Statewide. In 1979, and 1983-1985, the Commission reviewed a number of secondary treatment waiver applications under the federal consistency provisions of the Coastal Zone Management Act, and EPA ultimately granted many of these waivers. During these reviews the Commission expressed concern over the need for treatment meeting the *equivalent* of secondary treatment with respect to removal of toxics. Nevertheless, at that time, the Commission consciously adopted a neutral position on the waivers. Since a position of "neutrality" is not an action that is recognized under CZMA regulations, the Commission's concurrence in the waivers was presumed pursuant to section 307(c)(3)(A) of the CZMA.

Section 301(h) waivers are only valid for 5 years, although administrative extensions commonly occur during processing of renewal applications. Four of the waiver applicants continued to pursue waivers, which subsequently came up for renewal: Goleta, Morro Bay, Orange County (CSDOC), and the City of San Diego. On January 8, 1997, the Commission concurred with Goleta's renewal (CC-126-96). On January 13, 1999, and January 12, 1993, the Commission concurred with Morro Bay’s renewals (CC-123-98 and CC-88-92, respectively). On March 10, 1998, the Commission concurred with Orange County’s renewal (CC-3-98). Orange County has now agreed to upgrade to secondary treatment, by December 31, 2012.

The City of San Diego had allowed its initial waiver to lapse; however special legislation (the Ocean Pollution Reduction Act of 1994 (OPRA)) enabled the City to reapply. Due to this unique circumstance, on September 27, 1995, after a Commission public hearing, the Commission staff concurred with a “No effects” letter (rather than the normal consistency certification) for the City of San Diego’s initial waiver (NE-94-95). On April 8, 2002, the Commission initially objected to the City of San Diego’s waiver renewal (CC-10-02), and the San Diego RWQCB echoed several of the Commission’s concerns, which involved mass emissions levels, water reclamation, and monitoring provisions. The RWQCB modified its staff-recommended permit conditions and addressed these three areas of Commission concern with additional conditions reducing permitted mass emission loadings by 6.7%, requesting annual reports showing progress towards implementing water reclamation, and further review of the monitoring program. On May 8, 2002, the City of San Diego appealed the Coastal Commission’s consistency certification objection (CC-10-02) to the Secretary of Commerce. On May 9, 2002, the City appealed the RWQCB’s NPDES permit action modifying the mass emission limits to the State Water Resources Control Board (SWRCB). The City and the Commission staff agreed to “stay” any further deliberations in the Commission/Secretary of Commerce appeal, pending Commission reconsideration of the matter once the SWRCB acted. On August 15, 2002, the SWRCB ordered the mass emission limits to be returned to the originally-drafted 15,000 metric tons (MT)/yr. (for the first four years) (i.e., the level recommended prior to RWQCB modification). On September 9, 2002, the Commission concurred with the City’s consistency certification for the permit as modified and ordered by the SWRCB (and resubmitted to the Commission as CC-28-02).

V. Status of Local Coastal Program. The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If an LCP that the Commission has certified and incorporated into the California Coastal Management Program (CCMP) provides development standards that are applicable to the project site, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The City of Goleta’s LCP has not been submitted to or certified by the Commission; thus it has not been incorporated into the CCMP.

VI. Applicant’s Consistency Certification. The Goleta Sanitary District has certified that the proposed activity complies with the federally approved California Coastal Management Program and will be conducted in a manner consistent with such program.

VII. Staff Recommendation. The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission **concur** with consistency certification CC-13-02 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

STAFF RECOMMENDATION:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence in the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

RESOLUTION TO CONCUR IN CONSISTENCY CERTIFICATION:

The Commission hereby **concurs** with the consistency certification made by the Goleta Sanitary District for the proposed project, finding that the project is consistent with the California Coastal Management Program.

VIII. Findings and Declarations:

The Commission finds and declares as follows:

A. Water Quality/Marine Resources.

1. Regulatory Framework. The Environmental Protection agency (EPA) and the applicable RWQCBs (Regional Water Quality Control Boards) regulate municipal wastewater outfalls discharging into the Pacific Ocean under NPDES permits issued pursuant to the federal Clean Water Act. As enacted in 1972, the Clean Water Act required secondary treatment for all wastewater treatment nationwide. Amendments to the Clean Water Act in 1977 provided for Section 301(h) (33 USC Section 1311(h)) waivers of the otherwise applicable requirements for secondary treatment for discharges from publicly owned treatment works into marine waters. Section 301(h) is implemented by EPA regulations set forth in 40 CFR Part 125, Subpart G.

Section 301(h) of the Clean Water Act provides that an NPDES permit which modifies the secondary treatment requirements may be issued if the applicant: (1) discharges into oceanic or saline, well-mixed estuarine waters; and (2) demonstrates to EPA's satisfaction that the modifications will meet those requirements specified in Section 301(h) (see pp. 13-14 below), including: (a) that the waiver will not result in any increase in the discharge of toxic pollutants or otherwise impair the integrity of receiving waters; and (b) that the discharger must implement a monitoring program for effluent quality, must assure compliance with pre-

treatment requirements for toxic control, must assure compliance with water quality standards, and must measure impacts to indigenous marine biota. In California, the applicable water quality standards are embodied in the California Ocean Plan (see pp. 14-16 below, and Exhibit 5).

While the State of California (through the SWRCB and RWQCBs) administers the NPDES permit program and issues permits for most discharges to waters within State waters, authority to grant a waiver and issue a modified NPDES permit under Section 301(h) of the Act is reserved to the Regional Administrator of EPA. Prior state concurrence with the waiver is also required.

Section 307(f) of the federal CZMA specifically incorporates the Clean Water Act into the California Coastal Management Program (CCMP). Commission consistency certification review is required for 301(h) applicants, because EPA NPDES permits are listed in California's program as federal licenses or permits for activities affecting land or water uses in the coastal zone. In reviewing the discharges, the Commission relies on the Clean Water Act and its implementing regulations, the California Ocean Plan, the Coastal Act (Chapter 3 policies), and Water Code Section 13142.5 (incorporated into the Coastal Act by Section 30412(a)). These requirements, which are further described and summarized below, provide both specific numerical standards for pollutants, as well as general standards for protection of marine biological productivity.

a. Clean Water Act/Section 301(h). Implementation of the Clean Water Act in California, for the most part, has been delegated to the applicable RWQCB for issuance of NPDES permits. Under an MOA between EPA and the State of California, NPDES permits for outfalls beyond 3 miles *and* for secondary treatment waivers (regardless of location) are issued jointly by EPA and the applicable RWQCB. The Clean Water Act divides pollutants into three categories for purposes of regulation, as follows: (1) conventional pollutants, consisting of total suspended solids (TSS or SS); biochemical oxygen demand (BOD, a measure of the amount of oxygen consumed during degradation of waste); pH; fecal coliform bacteria; and oil and grease; (2) toxic pollutants, including heavy metals and organic chemicals; and (3) non-conventional pollutants (a "catch-all" category for other substances needing regulation (e.g., nitrogen and phosphorus, chlorine, fluoride)).

Guidelines adopted under Section 403 of the Clean Water Act (40 CFR Part 125.120-124, Subpart M, "Ocean Discharge Criteria") specify that beyond an initial mixing zone, commonly referred to as the zone of initial dilution (ZID), the applicable water quality standards must be met. The zone of initial dilution is the boundary of the area where the discharge plume achieves natural buoyancy and first begins to spread horizontally. Discharged sewage is mostly freshwater, so it creates a buoyant plume that moves upward toward the sea surface, entraining ambient seawater in the process. The wastewater/seawater plume rises through the water column until its density is equivalent to that of the surrounding water, at which point it spreads out horizontally.

Section 301(h) of the Clean Water provides for secondary treatment waivers under certain circumstances. The following requirements must be met for EPA to grant a secondary treatment waiver:

- (1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;*
- (2) such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population (BIP) of shellfish, fish and wildlife, and allows recreational activities, in and on the water;*
- (3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of the monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;*
- (4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;*
- (5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;*
- (6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;*
- (7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;*
- (8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;*

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of the Clean Water Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into marine estuarine waters which at the time of application do not support a balanced, indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish and wildlife, or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. ...

b. California Ocean Plan. The California Ocean Plan was originally adopted by the SWRCB and approved by the EPA in June 1972, and is revised every three years. Among the California Ocean Plan requirements are the following water quality objectives (Chapter II):

A. Bacterial Characteristics, for body-contact recreation and shellfish harvesting;

B. Physical Characteristics, including floatables, visible oil and grease, discoloration of the surface, the reduction of light penetration, and the rate of deposition of solid and inert materials on the bottom;

C. Chemical Characteristics, including dissolved oxygen, pH, dissolved sulfide in and near sediments, concentration of substances in the sediments, organic materials in the sediments, and nutrient levels, and including maintenance of standards such as protecting indigenous biota and marine life;

D. Biological Characteristics, including:

1. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.

2. The natural taste, odor, and color of fish, shellfish, or other marine resources used for human consumption shall not be altered.

3. The concentrations of organic materials in fish, shellfish or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health.

E. Radioactivity, including maintenance of a standard that marine life shall not be degraded.

General requirements in the Ocean Plan include:

A. Waste management systems that discharge to the ocean must be designed and operated in a manner that will maintain the indigenous marine life and a healthy and diverse marine community.

B. Waste discharged to the ocean must be essentially free of:

1. Material that is floatable or will become floatable upon discharge.

2. Settleable material or substances that may form sediments which will degrade benthic communities or other aquatic life.

3. Substances which will accumulate to toxic levels in marine waters, sediments or biota.

4. Substances that significantly decrease the natural light to benthic communities and other marine life.

5. Materials that result in aesthetically undesirable discoloration of the ocean surface.

C. Waste effluents shall be discharged in a manner which provides sufficient initial dilution to minimize the concentrations of substances not removed in the treatment.

D. Location of waste discharges must be determined after a detailed assessment of the oceanographic characteristics and current patterns to assure that: ...

1. Pathogenic organisms and viruses are not present in areas where shellfish are harvested for human consumption or in areas used for swimming or other body-contact sports.

2. Natural water quality conditions are not altered in areas designated as being of special biological significance.

3. Maximum protection is provided to the marine environment.

In addition, the Ocean Plan contains "Table A" effluent limitations for major wastewater constituents and properties, "Table B" limitations that provide maximum concentrations for toxic materials that may not be exceeded upon completion of initial dilution, and other standards. Table A and B limitations are contained in Exhibit 5.

c. Coastal Act Policies. The Coastal Act contains policies protecting water quality and marine resources. Section 30230 of the Coastal Act provides:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water

reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition to these resource protection policies, Section 30412 addresses the Commission's relationship with the SWRCB (State Water Resources Control Board and RWQCB); Section 30412 provides (in relevant part):

(a) In addition to the provisions set forth in Section 13142.5 of the Water Code, the provisions of this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate the provisions of this section. Neither the commission nor any regional commission shall, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, regional commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out the provisions of this division.

Finally, Section 13142.5 of the Water Code, which is referenced in Section 30412 above, provides:

In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

(a) Waste water discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

- (1) Wetlands, estuaries, and other biologically sensitive sites.*
- (2) Areas important for water contact sports.*
- (3) Areas that produce shellfish for human consumption.*

(4) Ocean areas subject to massive waste discharge.

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges...

2. EPA Evaluation of the Goleta Sanitary District's Discharges. EPA has conducted a technical evaluation analyzing the Goleta Sanitary District compliance with the 301(h) criteria discussed above. This tentative evaluation, dated, January 17, 2002 (Exhibit 3), includes the following EPA findings:

SUMMARY OF FINDINGS

Based upon review of the data, references, and empirical evidence furnished in the 1997 re-application, and associated monitoring reports, the EPA Region 9 makes the following findings with regard to compliance with the statutory and regulatory criteria:

- 1. The applicant's proposed discharge will comply with the California Ocean Plan water quality standards for suspended solids and dissolved oxygen, and pH. [Section 301(h)(1), 40 CFR 125.61].*
- 2. The applicant's proposed discharge will not adversely impact public water supplies or interfere with the protection and propagation of a balanced, indigenous population of fish, shellfish, and wildlife. [Section 301(h)(2), 40 CFR 125.62].*
- 3. The existing monitoring program is sufficient to assess the impacts associated with the outfall. EPA and the Central Coast Regional Water Quality Control Board have made minor changes to the influent and effluent monitoring requirements that are reflected in the draft permit. [Section 301(h)(3), 40 CFR 125.63].*
- 4. The applicant's proposed discharge will not result in any additional treatment requirements on any other point or nonpoint source. [Section 301(h)(4), 40 CFR 125.64].*
- 5. The applicant has an approved pretreatment program which has been in effect since 1983. [Section 301(h)(5), 40 CFR 125.66 and 125.68].*
- 6. The applicant addresses the urban area pretreatment requirement by establishing applicable local limits for each toxic pollutant introduced in the effluent by industrial sources. [Section 301(h)(6), 40 CFR 125.65].*

7. *The applicant has a nonindustrial source control program which has been in effect since 1986 to characterize pollutants from residential areas and a public education program encouraging waste minimization/source reduction programs to limit entrance of toxic pollutants and pesticides into the treatment plant. [Section 301(h)(7), 40 CFR 125.66].*

8. *There will be no substantially increased discharge from the point source of the pollutants to which the variance would apply (BOD and SS), above those which would be specified in the section 301(h) permit. [Section 301(h)(8), 40 CFR 125.67].*

9. *The applicant has demonstrated through past performance that its treatment facilities will be removing more than 30% of the influent five-day biochemical oxygen demand (BOD) and suspended solids. The applicant will be in compliance with all applicable Federal water quality criteria, as established under Section 304(a) of the Clean Water Act. [Section 301(h)(9), 40 CFR 125.60]*

10. *In a letter dated November 30, 2000, the Central Coast Regional Water Quality Control Board made a determination that the NPDES permit contains provisions to ensure that the discharge will meet water quality standards for the Pacific Ocean and not require imposition of additional treatment or control requirements to be applied to other dischargers. Issuance of final waste discharge requirements will constitute the State's certification and concurrence under 40 CFR 124.54.*

CONCLUSION

It is concluded that the applicant's proposed discharge will comply with the requirements of section 301(h) and 40 CFR Part 125, subpart G, as stated above.

More specifically with respect to TSS and BOD, EPA's analysis stated:

A. Suspended Solids.

1. *Solids Removal.* *The California Ocean Plan (COP) calls for at least 75% removal of suspended solids (as a 30-day average). The applicant measures the suspended solids concentrations in the influent and effluent five times per week. ... The average monthly suspended solids concentration is 40 mg/l. The maximum monthly average was 56 mg/l.*

...

The average monthly percent removal over this same time period was 86 mg/l. The minimum monthly percent removal over this time period was 81%.

Table 2. Average monthly percent removal of suspended solids concentration in Goleta effluent.

<i>Month</i>	1996	1997	1998	1999	2000	2001
<i>January</i>		87	86	87	88	88
<i>February</i>		87	84	88	85	85
<i>March</i>		86	86	89	82	83
<i>April</i>		85	86	89	83	86
<i>May</i>		87	84	85	86	83
<i>June</i>		87	86	89	89	84
<i>July</i>		87	83	91	86	84
<i>August</i>		86	81	89	87	85
<i>September</i>		88	83	86	89	85
<i>October</i>	88	85	82	87	89	83
<i>November</i>	89	88	84	90	88	
<i>December</i>	89	90	88	88	86	
<i>Annual Average</i>	89	87	84	88		

2. Turbidity. The COP establishes the following effluent limits for turbidity.

<i>Turbidity</i>	<i>30-day Ave.</i> 75 NTU ³	<i>Weekly Ave.</i> 100 NTU	<i>Daily Max.</i> 225 NTU
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These were established as permit limits in the existing permit. Effluent turbidity is measured by the applicant five times per week. These data are summarized in Table 3.

Table 3. Average monthly turbidity concentration (NTU) in Goleta effluent.

<i>Month</i>	1996	1997	1998	1999	2000	2001	<i>Average</i>
<i>January</i>		42	48	48	43	38	44
<i>February</i>		51	46	55	47	46	49
<i>March</i>		53	38	53	45	47	47
<i>April</i>		57	42	37	47	48	46
<i>May</i>		53	51	56	53	55	54
<i>June</i>		54	48	51	52	53	51
<i>July</i>		50	52	49	51	45	49
<i>August</i>		50	57	46	51	42	49
<i>September</i>		46	51	42	41	41	44
<i>October</i>		52	54	45	45	46	48
<i>November</i>	50	49	51	45	51		49
<i>December</i>	41	49	47	50	42		46
<i>Annual Average</i>	45	50	49	48	48	46	48

³ Nephelometric Turbidity Units, measuring light scattering through a solution.

These weekly data were compared to the COP standard for turbidity. The following values represent the maximum 30-day average, the maximum weekly average, and the maximum daily maximum for the time period between October 1996 and October 2001:

	30-day Ave.	Weekly Ave.	Daily Max.
<i>Turbidity</i>	<i>58 NTU</i>	<i>67 NTU</i>	<i>105 NTU</i>

3. Light Transmittance. Increased suspended solids concentrations associated with municipal discharges can cause a decrease in light penetration in the water column. ... The applicant has been monitoring light transmittance in the offshore area to help in the evaluation of the COP standard. ... The overall effect is minimal relative to the range of natural variability at the... [monitoring] stations (Fig 2[Exhibit 2]).

4. Summary of Suspended Solids. The applicant has demonstrated through past performance the ability to meet effluent limitations for suspended solids and turbidity established by the COP. Our review of the offshore monitoring data, indicates that the outfall is not having a significant effect on dissolved oxygen or light transmittance. Limits for suspended solids and turbidity will be included in the revised NPDES permit to ensure continued compliance.

B. Dissolved Oxygen.

...EPA reviewed the effluent BOD data for the outfall for the period between October 1996 and October 2001. The average monthly BOD concentrations was 59 mg/l. The maximum monthly concentration during this time period was 76 mg/l. These numbers are well below the permit limit of 95 mg/l. The average monthly percent removal during this time period was 72%, the minimum monthly percent removal was 62%.

Table 6. Average monthly BOD percent removal in Goleta effluent.

<i>Month</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
<i>January</i>		74	75	72	77	76
<i>February</i>		77	66	68	68	72
<i>March</i>		74	72	72	72	72
<i>April</i>		71	69	71	72	77
<i>May</i>		71	69	62	71	67
<i>June</i>		73	69	65	70	72
<i>July</i>		71	71	72	72	73
<i>August</i>		72	68	75	72	76
<i>September</i>		76	66	74	76	76
<i>October</i>	77	76	69	72	73	74
<i>November</i>		78	73	76	69	
<i>December</i>		79	76	76	76	
<i>Annual Average</i>		74	70	72	72	

The applicant has been monitoring dissolved oxygen concentrations to help in the evaluation of the COP standard. The data for the years 1999 and 2000 are presented in Figure 3. EPA has summarized these data relative to the COP standard of 10% (Table 7). Positive values in the table indicate that dissolved oxygen concentrations at the ZID station (WC-ZID) were depressed relative to the other water quality stations which might suggest an outfall effect. Negative values in the table indicate that the concentration around the outfall was higher than at the other stations and therefore should not be considered an outfall-related effect. EPA concludes that the outfall is not having an effect on dissolved oxygen concentrations.

Table 7. Percent reduction in dissolved oxygen concentration at edge of zone of initial dilution (WC-ZID) integrated over water column relative to other water quality stations (Negative values in chart indicate that concentrations at WC-ZID were higher than other stations).

<i>Quarter</i>	<i>WC-ZID vs B1</i>	<i>WC-ZID vs B2</i>	<i>WC-ZID vs B3</i>	<i>WC-ZID vs B4</i>	<i>WC-ZID vs B5</i>	<i>WC-ZID vs B6</i>
<i>January 1999</i>	-3%	-4%	-7%	-7%	-7%	-6%
<i>April 1999</i>	4%	4%	4%	6%	3%	3%
<i>July 1999</i>	1%	0%	-3%	0%	-4%	0%
<i>October 1999</i>	3%	4%	3%	3%	-2%	-4%
<i>January 2000</i>	4%	4%	4%	2%	3%	-1%
<i>April 2000</i>	9%	-1%	4%	-2%	0%	6%
<i>July 2000</i>	4%	4%	2%	-2%	-4%	4%
<i>October 2000</i>	1%	0%	2%	1%	0%	1%

The potential for outfall-related DO depressions was also evaluated with respect to 1) initial dilution 2) BOD exertion in the farfield 3) steady-state sediment oxygen demand and 4) oxygen demand due to sediment resuspension. The procedures for making these calculations are detailed in EPA's 301(h) Technical Support Document (EPA, 1982, 1994).

...

5. Summary of Dissolved Oxygen. The outfall plume will not significantly affect ambient dissolved oxygen concentrations outside the zone of initial dilution of the outfall. This is based on our review of the results of predictive models (summarized in Table 8) and our review of ambient monitoring data (summarized in Table 7).

Table 8. Estimates of worst-case dissolved oxygen depressions (mg/l) associated with the Goleta Outfall

Sources of potential oxygen demand	Goleta (1992)	EPA (1993)	Goleta (2000)
<i>Dissolved oxygen (DO)depression upon Initial dilution</i>	NA		0.07
<i>DO depression due to BOD exertion in the farfield</i>	0.03	0.01	NA
<i>DO depression due to steady state oxygen demand</i>	<0.01	0.01	0.037
<i>DO depression due to abrupt sediment resuspension</i>	<0.01	0.03	0.075

Concerning biological impacts, EPA states:

E. Conclusions on Balanced Indigenous Population. *EPA concludes that a balanced indigenous population is being maintained in the vicinity of the outfall and recreational activities are protected. This conclusion is based on the following considerations:*

- 1. The discharge meets all COP standards and EPA water quality criteria. EPA models indicate that the outfall design and location result in a high degree of initial dilution. The applicant's discharge meets effluent limitations specified in the existing permit.*
- 2. The increase in solids deposition near the outfall is relatively small and there is no indication of organic accumulation in the vicinity of the outfall. Thus, benthic communities in the vicinity of the outfall are not likely degraded by the discharge.*
- 3. Benthic communities in the vicinity of the outfall are not being degraded by sediment contamination. Organic pollutants in sediments are below detection levels and metals are at background levels.*
- 4. Benthic monitoring data does not indicate any significant changes in species composition, number of species, abundance, diversity, evenness, or dominance which would suggest an outfall-related impact. Fish populations are not likely to be impacted by the quality and quantity of effluent being discharged.*
- 5. Effluent coliform data indicates that the outfall is not a major source of bacteria. Bacterial monitoring in the offshore and along the beaches indicate that water quality standards are being met.*

In addition to the above analyses, EPA and the RWQCB staff have provided an updated analysis, which is attached as Exhibit 6.

3. Commission Conclusion. The information submitted by the Goleta Sanitary District, along with the supporting analysis and information from EPA and the RWQCB, supports the Sanitary District's request for a continued secondary treatment waiver. Historically, the Commission has generally concurred with consistency certifications for these types of waivers and waiver renewals, and found applicable water quality and marine resource policies of the Coastal Act to be met, when: (1) adequate monitoring is in place; and (2) EPA and the appropriate RWQCB have determined that the discharger's effluent complies with the applicable Clean Water Act and Ocean Plan requirements. In this case, the Sanitary District has monitored its discharges since its initial waiver was granted, and these monitoring efforts support the Sanitary District's conclusions that its discharges meet the applicable water quality and marine resource requirements. Moreover, the stringent monitoring as required under Section 301(h) will be continued.

More importantly, the Sanitary District has now agreed to upgrade its facilities to provide for secondary treatment of its discharges, as described in the November 10, 2004, settlement agreement between the District and the RWQCB (Exhibit 4). This agreement provides for an upgrade to full secondary treatment within ten years.

Based on EPA's analysis, including a review of plant performance and modeling efforts performed since the previous permit was issued, the outfall does not appear to be resulting in any significant reduction in light transmissivity, any biologically significant changes in benthic community structure in the vicinity of the outfall (beyond the zone of initial dilution), or any significant changes in fish populations or fish diseases in the area. EPA and the RWQCB have also addressed a historic Commission's historic concern over toxics by continuing to include requirements for the implementation of a pollution prevention program to minimize discharge of toxic pollutants into the sewer system. These factors, combined with the District's commitment to upgrade its system to full secondary treatment within ten years, enable the Commission to conclude that the Goleta Sanitary District's discharges would be consistent with the applicable marine resource and water quality provisions (Sections 30230 and 30231) of the Coastal Act.

B. Commercial Fishing/Recreation. Section 30230 of the Coastal Act, quoted in full on page 16 above, includes a requirement that:

Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The Coastal Act also contains more specific policies protecting commercial and recreational fishing; Section 30234 provides:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5 provides:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The Coastal Act also protects public recreation (such as surfing and other water-contact recreation). Section 30213 provides, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.

Section 30220 provides:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

As discussed in the water quality/marine resource section above, the Sanitary District's monitoring efforts over the past five years are sufficient to enable a determination that commercial/recreational fishing and other recreational concerns are met. EPA states concerning effects on fish populations:

Given the relatively small volume of discharge and small area of potential impact, EPA finds that potential for impacts to local fish populations to be unlikely. This is supported by the low concentrations of toxics in the effluent which ensure that water quality standards are being met and the lack of impact to the benthic communities.

Concerning recreational diving, EPA states:

D. Impact of Discharge on Recreational Activities. Under section 125.62(d), the applicant's proposed modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities at and beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, picnicking and sports activities along shorelines and beaches.

The COP applies the following bacterial standards for shoreline and body contact sports areas:

Total Coliform bacteria: Greater than 80% of samples in a 30-day period shall be less than 1,000 MPN per 100 ml at each sampling station. No single sample, when verified by a repeat sample within 48 hours, shall be greater than 10,000 MPN per 100 ml.

Fecal Coliform bacteria: The geometric mean shall not exceed 200 MPN per 100 ml based on at least 5 samples in any 30-day period and not more than 10% of the total samples during any 60-day period shall exceed 400 MPN per 100 ml.

In shellfish harvest areas, total coliform shall not exceed a median value of 70 MPN per 100 ml and not more than 10% of the samples shall exceed 230 MPN per 100 ml.

The permit requires the Goleta Sanitation District to disinfect the effluent such that no more than 10% of the final effluent samples in any monthly period shall exceed a total coliform density of 2,400 MPN/100 ml, and no sample shall exceed 16,000 MPN/100 ml. Assuming a dilution factor of 122:1 an effluent concentration of 2400 MPN would result in a expected plume concentration in the plume is around 20 MPN/100 ml. An effluent concentration of 16,000/100 ml would result in a plume concentration of 132 MPN/100 ml. The permit limits are designed to ensure that the outfall does not affect either recreational use or shell fish harvest uses in the area.

The effluent is monitored for total coliform, fecal coliform and enterococcus five days per week. ... EPA's review of the applicant's data indicates that these limits have been consistently met throughout the permit period.

...

The applicant also monitors the shoreline along the beach for both total coliforms, fecal coliforms and enterococcus seven stations as part of their NPDES permit (See ...[Exhibit] 2). The monitoring at Goleta Slough is not part of the NPDES permit but is done by the applicant to evaluate the influence of runoff from the slough on shoreline bacterial concentrations.

...almost all of the exceedances of threshold at [shoreline] station E are associated with threshold exceedances at Goleta Slough This suggests that non-point sources from Goleta Slough contribute to shoreline bacterial contamination. ...

EPA concludes that bacterial concentrations associated with the discharge of waste from the Goleta outfall is not likely to affect recreational uses in the Goleta area. This is based on our review of effluent data relative to the COP and Basin Plan standards as well as water quality data from the offshore, nearshore and shoreline areas.

The Commission notes that the average effluent coliform concentrations over the five years period of 1996-2001 (total coliform averaged 57 MPN/100), without any dilution, were well below California Ocean Plan standards for body contact areas. (The 2003 average was 50 MPN/100.) Based on the above analysis and the information contained in the previous section of this report, with continued monitoring, and with the Sanitary District's commitment to upgrade its facilities to provide for secondary treatment of its discharges within 10 years (as described in the November 10, 2004, settlement agreement (Exhibit 4)), the Commission concludes that the discharges would be consistent with the applicable commercial and recreational fishing and general recreation policies (Sections 30230, 30234, 30234.5, 30213, and 30220) of the Coastal Act.

IX. SUBSTANTIVE FILE DOCUMENTS:

1. Consistency Certification No. CC-62-91/Coastal Development Permit No. 6-91-217 (City of San Diego, Point Loma outfall extension).
2. No Effects Determination NE-94-95 (City of San Diego, secondary treatment waiver).
3. RWQCB Tentative Order No. 96-21, Draft NPDES Permit No. CA0048160, Goleta Sanitary District, Order No. R3-2004-0129, and Settlement Agreement between RWQCB and Goleta Sanitary District dated November 10, 2004.
4. Consistency Certifications for secondary treatment waiver renewals, CC-88-92 and CC-123-98 (City of Morro Bay), CC-126-96 (Goleta Sanitary District), CC-3-98 (County Sanitation Districts of Orange County (CSDOC)), and CC-10-02 and CC-28-02 (City of San Diego).
5. Consistency Determination No. CD-137-96 (IBWC) International Boundary and Water Commission International Wastewater Treatment Plant Interim Operation.

X. Exhibits:

1. Area Map
2. Sampling Stations
3. EPA Analysis, 1/12/02
4. Settlement Agreement, RWQCB/Goleta Sanitary District, 11/10/04
5. California Ocean Plan
6. RWQCB Decision, Order No. R3-2004-0129, 11/19/04